

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street  
San Francisco, CA 94105**

**June 2, 2009**

**REG-2008-00022**

**TITLE 10. INVESTMENTS  
CHAPTER 5. INSURANCE COMMISSIONER  
SUBCHAPTER 3. INSURERS**

**FINAL STATEMENT OF REASONS**

**INTRODUCTION AND UPDATED INFORMATIVE DIGEST**

On August 15, 2008, California Insurance Commissioner Steve Poizner held a public hearing to consider the proposed addition of section 2359.8 to title 10 of the California Code of Regulations. While it is assumed that all entities conducting the business of title insurance intend to maintain and share all data relating to rates and rating systems, it is important for the Commissioner to have an established set of tools to deal with those entities that do not conduct business in accordance with this assumption.

The Commissioner's power to enforce the collection or reporting of data relating to the business of title insurance can be found within a number of statutes in the Insurance Code. Section 2359.8 implements, interprets, and makes specific these statutes by identifying the specific enforcement tools that the Commissioner, in his discretion, may use to ensure proper data collection and reporting.

After reviewing written comments<sup>1</sup> received on or before August 15, 2008, the Commissioner made technical, non-substantive changes to the initially-proposed regulation. Although not required by statute, the Commissioner provided more than 15 days of notice to members of the public in order to ensure additional opportunity for public participation in this rulemaking process. The Commissioner received and considered one additional written comment, and is now prepared to finalize the rulemaking file and proceed with adoption of section 2359.8 in title 10 of the California Code of Regulations.

**STATEMENT OF SPECIFIC PURPOSE AND NECESSITY FOR REGULATIONS**

The Commissioner made several minor amendments to the regulation text and circulated them to the public on April 9, 2009. All of the amendments represented technical, non-substantive changes within the meaning of Government Code section 11346.8 and California Code of Regulations, title 1, section 40. (See also Cal. Code Regs., tit. 1, § 100(a)(5).) The specific

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<sup>1</sup> Although no member of the public presented oral comments at the rulemaking hearing, the Commissioner did receive and consider a number of written comments. Each of those comments are summarized and responded to *infra*.

purpose of each of the April 9 amendments and an explanation of the reasons why each amendment is required to carry out the purpose of the regulation are described directly below.

**Revision to Title of Regulation: “Rate and Statistical Plan Enforcement Remedies”:**

The April 9 revision to the regulation added the words “Rate and” to the title of section 2359.8. Prior to this revision, the Commissioner received one public comment suggesting it was unclear whether the Commissioner’s enforcement remedy regulation was intended to apply to more than strictly statistical plan enforcement. Although the text of the regulation already included language notifying affected entities that data collection related to other ratemaking activities was also within the scope of this regulation, the addition of the word “Rate” in the title serves to remove any doubt.

The revision to the title of section 2359.8 is reasonably necessary to ensure that members of the public are fully aware of the scope of this enforcement remedy provision.

**Addition of Reference Citations to Insurance Code sections 12340.9, 12414.14 12414.15, 12414.16, 12414.17, 12414.18, 12414.19, 12414.24 and 12414.25:**

Two commenters assumed from the Commissioner’s initial regulation draft that the regulation purported to authorize the Commissioner to impose enforcement remedies against title insurance entities in a manner that disregarded his legal authority. For example, because the original text of the proposed regulation did not reference or cite to Insurance Code sections 12340.9, 12414.25 and related sections, the commenters interpreted the initial regulation draft to authorize the imposition of penalties without regard to whether the conduct was willful or non-willful.

The Commissioner’s regulation does not authorize or purport to permit the Commissioner to impose any remedies in a manner that is inconsistent with his authority. In order to allay any unfounded concerns that might lead an affected entity to the contrary conclusion, however, the regulation was revised on April 9 to specifically cite to a number of provisions of the Insurance Code which set forth the statutory procedure for conducting an enforcement action.

The addition of the reference citations to this regulation is reasonably necessary to assure regulated entities that the imposition of the Commissioner’s enforcement remedies will proceed within the limitations set forth in the overall statutory grant of authority.

**MANDATES**

The regulations do not impose a mandate on local agencies or school districts.

**COMPARABLE FEDERAL LAW**

Aside from the federal laws described in the Initial Statement of Reasons, which is incorporated by reference, there are no comparable existing federal regulations or statutes.

### **IDENTIFICATION OF STUDIES**

The Commissioner did not rely upon any data or technical, theoretical or empirical study, report or similar document in developing these regulations.

### **SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT**

Adoption of the proposed regulations will not mandate the use of specific technologies or equipment.

### **REASONABLE ALTERNATIVES**

The Commissioner has determined that no reasonable alternatives exist to carry out the purpose for which the regulations are proposed. Performance standards were considered but were rejected as unworkable. While the Commissioner invited public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes, none of the proposed alternatives met these requirements. Any alternatives that were proposed, and the Commissioner's reasons for rejecting those alternatives, are set forth in greater detail within the summary and response to comments.

### **ECONOMIC IMPACT ON SMALL BUSINESS**

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. To the extent that the proposed regulations affect insurance companies, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

### **INCORPORATION BY REFERENCE OF INITIAL STATEMENT OF REASONS**

In the event that a requirement of Government Code section 11346.9 may be satisfied by a statement made in the Initial Statement of Reasons for this regulation, the Initial Statement of Reasons is hereby incorporated by reference within the Final Statement of Reasons.

### **SUMMARY AND RESPONSE TO COMMENT**

The summary and response to comments are organized and bound directly after this page.